

EXPOSING WHITE COLLAR CRIME

Shedding Light in Dark Corners: The Exposure of White Collar Crime

To judge from reports published regularly, particularly in the business pages of the broadsheet press, one might suppose that the press play a central role in the exposure of white collar crime, particularly in its larger scale corporate forms. If true at all however, this can really only be said to hold in limited ways and for certain types of misconduct. In the case of investment frauds for example, there is now regular financial journalism which, besides advising on where to find the best mortgage package, how to minimise banking charges and the importance of drawing up a will to avoid inheritance tax, also conducts inquiries into apparent abuses by investment advisers. Barlow Clowes, for instance, probably only became a prominent politicised case because of press attention, which continued during police inquiries to refocus concern on the plight of investors who had lost their money, as well as evidence of impropriety by Peter Clowes.

The combination of the emergence of an affluent section of the population with modest but not trivial sums to invest, sustained government support for the expansion of the investing public by privatisation, share issues PEPs and TESSA's, as well as by continual propaganda, and the response by the financial services sector to the opportunity by developing an ever increasing variety of consumer investment opportunities, has led to the creation of a new section of public opinion with an active interest across retail financial services and investment that goes beyond the conventional building society account.



Such journalism serves a number of useful purposes. It may, as in the case

of Robert Miller of Dunsdale Securities, recently convicted of fraud and given a substantial sentence, serve as a warning to potential investors and a stimulus to the authorities to act to pursue a prosecution and close down the operation. It also, as was particularly evident in the Clowes affair, puts pressure upon the regulating authorities to provide compensation for investors - a particularly ticklish matter in the Clowes affair because the main events occurred whilst the new investor protection regime under the 1986 Financial Services Act was being set up. It can also act to stimulate the regulatory authorities to review their practices, both as to when and in what ways they should intervene when they find evidence of apparent misconduct, and on how to draw the line between risks that the investor is liable for and those for which they should take responsibility. Even if the regulatory authorities do take action however, and are satisfied that misconduct has been serious enough to warrant the suspension of the business, criminal proceedings may not follow and, even if they do, may not lead to conviction.

One of the most striking cases of this in recent years was the futures and options brokers D.P.R. whose robust attitudes to the commissions that earned the principals handsome profits, and whose cavalier attitudes to clients, who were encouraged to commit themselves further and further in what is a very high risk form of investment, generated a good deal of hostile publicity in 1988-90.

The principals were eventually prosecuted but acquitted, despite the explicit *churn them and burn them* philosophy at D.P.R. and the ruthless sales tactics.

The other obvious area in which the financial press plays a significant role is that of takeover and mergers. Here their function is somewhat different. In the case of major takeovers, there is clearly a substantial public interest even on the part of non-investors.

The apparent press role here is that of ferreting out as much information on all parties involved as possible in order to allow the investors, often very numerous, to make an informed judgement on the bid, and to expose and debate any evidence of impropriety, whether of a clearly irregular or even criminal character or merely sharp practice. In this sense the press play a useful role in

generating public debate on a subject which has become notoriously contentious, and ever more complex: whether takeovers should take place and if so according to what rules? The Guinness affair, occurring as it did in the run up to the 1987 general election, is a demonstration of how politicised matters can become, with the Government expressing its determination to see criminal charges laid. It is also indicative of a less evident feature of press reporting however. The information that led to criminal investigations did not derive from

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press reports. These, as is usual in takeovers, were largely a reflection of the propaganda machines of the parties to the takeover, each trying to present their own case in the best light and to denigrate the opposition. What at times appears as fearless investigative financial journalism is hence usually nothing of the sort, but rather the output of very well financed teams of investigators, analysts, consultants and public relations specialists at the headquarters of the combatants. In the Guinness case additionally, information about misconduct came from the New York financier Ian Boesky, who had just reached an agreement with the prosecuting authorities there to tell all he knew about misconduct elsewhere in return for a lower sentence. Boesky, in fact, was party to the share support operation that was at the heart of the Guinness affairs.

All this is to say that in the case of white collar crime, where the media - mainly the press - are involved in its exposure, the part they play is limited.

Not only are white collar criminals more sophisticated and better protected by professional advisers than the great majority of conventional criminals; they may, if they are corporations, be more powerful than the newspaper reporting their affairs. There is hence much less of the one sided reliance on police sources that characterises the reporting of conventional crime.

The media may campaign against a particular business or a particular issue,

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but they also mediate in a much more balanced way; that is, they present evidence attributed to various sources, none of which are necessarily taken as ultimately authoritative and definitive.

This leads to a further point which has been left implicit so far. **The regulation and prosecution of white collar crime is extraordinarily fragmented, particularly in Britain, but also in most countries in comparison to conventional crime.** Even if we restrict ourselves to public authorities with powers of prosecution, the tendency to proliferation and specialisation is striking. Not only may police prosecutions be referred to their specialist fraud squads as well as dealt with on division, but there is also the Serious Fraud Office which deals with really serious cases, involving over £1m. This is paralleled to some degree in the Crown Prosecution Service where the Fraud Investigation Group looks at the more serious cases, its remit overlapping that of the S.F.O. There are also numerous other bodies who may mount prosecutions within their specialisations: factory, health and safety, and pollution inspectorates, the nuclear safety inspectorate, environmental health, and trad-

bodies governing accounting, recognition is less clear cut; and in other cases still, trade associations may have only a weak regulatory capacity. All of them contribute to the prevention, evaluation and sanctioning of white collar crime. From even the limited comments above it is evident that white collar offences include such a range and complexity of misconduct that control is largely a specialist matter and the media, apart from the specialist trade media of each sector of the economy, do not have the space to pursue cases.

This leads to the final point: **what of the detection of white collar crime?** The media have almost no role here, mainly because they have no routine access to the sites of the misconduct. More significantly however, white collar cases are particularly sensitive to construction.

Rarely is there unequivocal evidence of wrongdoing that demands prompt denunciation as robbery or burglary does. **White collar crime is by nature contestable and the offender is usually well placed and well prepared with alternative accounts of his (or her) behaviour.**

Most white collar offences hence never reach the public domain, even when they are dealt with formally. The great majority are managed by negotiation, and the minority which are subject to more formal processing are shrouded by the politeness of official exchanges with regulatory authorities. It is only a very small proportion that are dealt with formally and publicly, and a minority of these that attract media attention.

The answer to the question of who exposes white collar crime is hence ultimately similar to that for conventional crime, though the process of exposure is different. We are all involved insofar as we come across cases. Hopefully we are no more likely to be involved in a major fraud than in a bank robbery. We may however, come across misconduct at work, in the supermarket, or when negotiating for car repairs or house maintenance, just as we may become involved in theft and burglary by experiencing it in our neighbourhood.

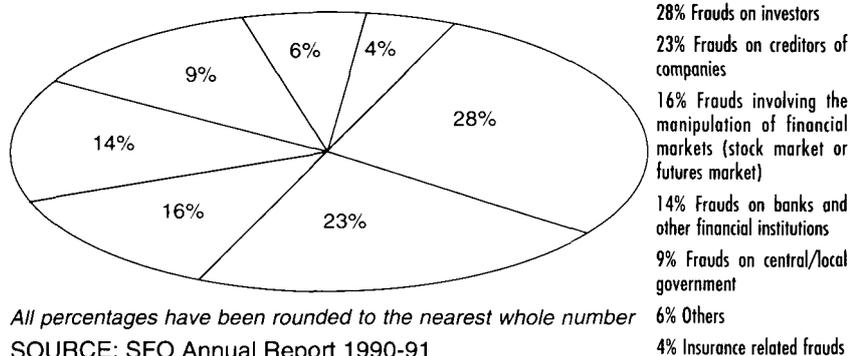
In the latter case we have to decide whether to report what are clearly crimes. In the case of white collar offences we have also to decide whether the conduct in question is unacceptable, and in what way, and then what to do about dealing with it.

References

- M.J. Clarke** *Business Crime*, Policy Press, 1990 provides an overview of white collar crime in different sectors.
- M. Levi** *Regulating Fraud*, Tavistock, 1986 gives a good account of control concentrating on the criminal justice system. A brief account of the Guinness affair is available in **N. Kochan and H. Pym**, *The Guinness Affair*, Christopher Helm, 1987.
- M.J. Clarke**, *Fallen Idols*, Junction Books, 1981 deals more extensively with role of the media and the development of cases of misconduct into scandals.

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THE SERIOUS FRAUD OFFICE
Types of fraud referred to the SFO during 1990-91



All percentages have been rounded to the nearest whole number

SOURCE: SFO Annual Report 1990-91

ing standards officers, the television license registration office, for example. It is paralleled by an even greater list of regulatory authorities which have the responsibility of disciplining members under their remit.

Some, like the self-regulating organisations created under the Financial Services Act, the Law Society or the Building Societies Commission, are recognised by statute to have those responsibilities. In other cases, notably the professional

This makes denunciation problematic, for not only does one not wish to accuse someone of abuse when this is not demonstrable, but the offender very often has a good deal of leverage: if you are an investor he is holding your money, if you are a manager, the offending employee is part of the whole organisation and some of his/her colleagues will also be friends, if you are a member of the public subject to pollution, the polluter will probably hold most of the evi-